

Application Serial No. 10/780,378
Amendment dated October 31, 2007
Reply to final Office Action of August 27, 2007

REMARKS

Applicants submit, contemporaneously herewith, a Request for Continued Examination pursuant to 37 C.F.R. § 1.114.

Claims 56-67 are pending in the application. Claims 1-55 have been cancelled. Claims 56-67 stand rejected and no claims have been allowed. Claim 56 has been amended.

Applicants are aware of U.S. Patent Application Serial No. 11/560,276 entitled PROSTHETIC IMPLANT SUPPORT STRUCTURE to Hanssen et al that, along with the present application, claims priority to U.S. Patent Application Serial No. 10/225,774, which is abandoned. Applicants are aware of no other copending applications that set forth similar subject matter to the current application.

Claim Rejections – 35 U.S.C. § 112

Claims 56-67 are rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Specifically, the Examiner contends that the subject matter is not described in a way as to reasonably convey to one of skill in the art that the inventors have possession of the claimed invention. Specifically, the Examiner contends that support cannot be found for a passageway sized to allow movement in a medial-lateral and anterior-posterior direction.

Responsive to the Examiner's rejection, Applicants direct the Examiner to lines 1-4 of page 1 of the present application as filed, which incorporates by reference U.S. Published Patent Application No. 2003/0065397 to Hanssen et al ("Hanssen '397"), filed August 22, 2002, and entitled PROSTHETIC IMPLANT SUPPORT STRUCTURE. As a result of the incorporation by reference, the disclosure of Hanssen '397 forms a portion of the specification of the present application. Referring to Figs. 1-4 of Hanssen '397, Applicants respectfully submit that support for a passageway sized to allow movement in medial-lateral and anterior-posterior directions is shown. Specifically, referring to Fig. 4, stem 24 of tibial implant 20 is clearly shown having a width that is less than the width of inner surface 47 of access channel 46.

In view of this disclosure, Applicants respectfully submit that support for Claims 56-67 is provided and respectfully request removal of the rejection under 35 U.S.C. § 112, first paragraph.

Claim Rejections – 35 U.S.C. § 102

Claims 56, 58-60, and 62-66 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,039,764 to Pottenger et al ("Pottenger '764").

Applicants respectfully submit that amended independent Claim 56 is not anticipated by Pottenger '764, as Pottenger '764 fails to disclose each and every limitation of amended independent Claim 56. Specifically, amended independent Claim 56 calls for a tibial augment system including, *inter alia*, a tibial implant comprising a tibial plate and a tibial post extending from the tibial plate, and a tibial augment including an *annular ring-shaped body*, the *annular ring-shaped body* defining an interior wall and an exterior wall, the interior wall of the tibial augment defining a passageway sized to accept the tibial post therethrough, *whereby with the tibial post positioned through the passageway the tibial augment is positioned about the tibial post and the tibial post extends from the ring-shaped annular body of the tibial augment*.

Referring to Pottenger '764, Pottenger '764 discloses, as shown in Fig. 43, fixation shaft 220 includes recess 222 configured to receive engagement post 228 of bearing element 226 (Fig. 34) therein. Fixation shaft 220 includes an opening configured for receipt of engagement post 228 and an opposing closed end configured for receipt within the intermedullary canal of the tibia. Thus, Pottenger '764 does not disclose or suggest forming fixation shaft 220 as a ring-shaped body. In contrast to amended independent Claim 56, no portion of engagement post 228 extends from fixation shaft 220. Moreover, engagement post 228 is prevented from extending from fixation shaft 220 due to the closed end thereof.

Thus, for the foregoing reasons, Applicants respectfully submit that amended independent Claim 56, as well as Claim 58-60 and 62-66, which depend therefrom, are not anticipated by 35 U.S.C. § 102(b).

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Claim Rejections – 35 U.S.C. § 103

Claim 57 is rejected under 35 U.S.C. § 103(a) as being obvious over Pottenger '764 in view of U.S. Patent No. 6,136,029 to Johnson et al ("Johnson '029"). In forming the rejection, the Examiner relies on Pottenger '764 as disclosing each and every limitation of Claim 56, from which Claim 57 depends. However, for at least the reasons set forth above, Pottenger '764 fails to disclose each and every limitation of amended independent Claim 56. The Examiner's further citation of Johnson '029 fails to overcome this deficiency, as neither Pottenger '764 nor Johnson '029, either alone or in combination, discloses or suggests each and every limitation of amended independent Claim 56.

For the foregoing reasons, Applicants respectfully submit that Claim 57, which depends from amended independent Claim 56, is not obvious over Pottenger '764 in view of Johnson '029.

Claim 67 is rejected under 35 U.S.C. § 103(a) as being obvious over Pottenger '764 in view of U.S. Patent No. 4,822,366 to Bolesky ("Bolesky '366"). In forming the rejection, the Examiner relies on Pottenger '764 as disclosing each and every limitation of amended independent Claim 56, from which Claim 67 depends. However, for at least the reasons set forth above, Pottenger '764 fails to disclose each and every limitation of amended independent Claim 56. The Examiner's additional citation of Bolesky '366 fails to overcome this deficiency, as neither Pottenger '764 nor Bolesky '366, either alone or in combination, discloses or suggests each and every limitation of amended independent Claim 56.

Thus, for at least the foregoing reasons, Applicants respectfully submit that Claim 67, which depends from amended independent Claim 56, is not obvious over Pottenger '764 in view of Bolesky '366.

It is believed that the above represents a complete response to the Office Action and reconsideration is requested. Specifically, Applicants respectfully submit that the current application is in condition for allowance and such action is earnestly solicited.

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In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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CERTIFICATION OF MAILING

I hereby certify that this correspondence is being electronically filed with the U.S. Patent and Trademark Office on: October 31, 2007

MATTHEW B. SKAGGS, REG. NO. 55,814

Name of Registered Representative


Signature

October 31, 2007

Date